



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-10572

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

12/22/2014

Decision

HOWE, Philip S., Administrative Judge:

On June 14, 2011, Applicant submitted her electronic version of the Security Clearance Application (SF 86) (e-QIP). On November 7, 2013, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on December 10, 2013. Applicant requested her case be decided on the written record in lieu of a hearing.

On January 24, 2014, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on September 24, 2014. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on September 30, 2014. Applicant did not file a Response to the FORM within the 30-day time allowed that would have expired on October 30, 2014. I received the case assignment on December 4, 2014. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted the allegations in all three Subparagraphs of the SOR. (Items 1-3)

Applicant works for a defense contractor. She is 35 years old and has a certificate in aviation maintenance. She has one child. She moved from one state to another for her job and to be closer to the father of her child, for the child's benefit, in the summer of 2011. (Items 1-6)

The SOR alleges three delinquent debts. The Government amended the second allegation to delete "\$2,180" and replace it with "\$2,387" and in the third allegation replacing "\$8,389.00" with "\$9,107.00" to accurately reflect the actual amount of money owed. All three debts total \$11,649. (FORM; Items 1-6)

Applicant owes \$155 on a credit account from 2011 (Subparagraph 1.a). She claims in her Answer it was paid in a settlement for \$93 on December 10, 2013. Her November 2013 credit report shows the debt as due and owing. Applicant originally disputed the debt but later decided to resolve it. She did that and the debt is not owed anymore, based on her Answer and the minimal amount of the debt. (Items 1-6)

Applicant is indebted on two student loans (Subparagraphs 1.b and 1.c). These debts total \$11,494, as amended. Applicant claims she could not pay the student loans in a timely manner because she moved to her new job and did not have the money to pay for the move and her student loans. The file documents show Applicant's debts were delinquent from December 2005 and January 2006 to the present time. Her last payments were in 2008, preceding her move in 2011. (Items 1-6)

Applicant was unemployed from April 2008 to July 2008. Otherwise she has been fully employed since December 2005. She has had time from 2011 to the present to arrange payment of her student loans. Her November 2013 credit report shows the two student loan accounts and a cellular telephone debt. Her July 2011 interview with a

government investigator includes her statement that she cannot pay her current obligations beyond her rent and food because she is a single parent. She sought a roommate in 2011 to help reduce her monthly rent obligations. No current information was provided by Applicant about her 2014 financial situation. Her personal financial statement from October 2012 shows her net monthly income as \$2,849 and her expenses as \$2,414, leaving \$435 of disposable income. (Items 1-6)

Applicant did not submit any documentation that she has participated in credit counseling or budget education. Her interview in July 2011 with the government investigator states she has not had any credit counseling. She provided no evidence concerning the quality of her job performance. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing. (Item 6)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain,

extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

From 2005 to the present, Applicant accumulated three delinquent debts. One debt was paid for \$155. The two remaining debts total \$11,649 and remain unpaid or unresolved.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. None of the mitigating conditions apply.

AG ¶ 20 (a) would apply if Applicant's financial problems occurred long ago, were infrequent, or occurred under unusual circumstances not likely to reoccur. Such is not the situation for this Applicant. This mitigating condition does not apply.

AG ¶ 20 (b) would apply if the loss of employment was shown by Applicant to have a substantial effect on her ability to repay her student loan debts. In the past eight years, Applicant has been unemployed three months. She failed to meet her burden of proof on that issue.

Applicant has not had any financial counseling and there is no indication she has any plan to repay her student loans, based on her past inaction toward repayment. AG ¶ 20 (c) does not apply.

Applicant only repaid one small debt for \$155. She settled the debt for \$93. She did not make any good-faith effort to repay her \$11,494 in delinquent student debt. AG ¶ 20 (d) does not apply to her student loans.

Applicant has not asserted a reasonable basis to dispute the legitimacy of the delinquent debts nor provided any documents showing a basis for the dispute. AG ¶ 20 (e) does not apply.

Applicant has not shown any affluence so this mitigating condition AG ¶ 20 (f) is not an issue in this case.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant was an adult when she incurred the debts. She has not taken any action to resolve her two delinquent student loan debts. This inaction leaves her vulnerable to pressure, coercion, exploitation, or duress based on her financial obligation. Her lack of action continues to this day, and is obviously voluntary. Her inaction will continue based on past performance. Applicant displayed a lack of good judgment incurring the debts. Next, she exhibited a continued lack of appropriate judgment by failing to make any payments on her two delinquent debts during the past eight years.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the whole-person concept against Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b and 1.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

PHILIP S. HOWE
Administrative Judge